IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.13690 of 2006

Date of Decision: 29.8.2006

Surjit Singh Gill .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Rakesh Garg, Advocate
for the petitioner.

S.D.ANAND,J.

The petitioner, a Senior Coach in the Department of Sports and Youth Services of the State of Punjab, has filed this Civil Writ Petition to obtain invalidation of order dated 2.8.2006 (Annexure P3/A) vide which respondents 3 to 10 have been promoted in derogation of his claim of promotion.

He was initially appointed as a Sports Officer, on adhoc basis, in the year 1974. His appointment on regular basis was made vide order dated 27.7.1977. His services are regulated by Punjab Sports (Class II) Service Rules, 1990. Vide notification dated 9.5.1991, the post of Sports Officer was re-designated as Coach with effect from the date of notification itself. That notification also provided the upgraded designation of the Sports Officers/Coaches as Senior Coaches. In the final seniority list of Sports Officer/Senior Coaches circulated vide memo dated 15.2.2005, the petitioner figured at Serial No.2. Ms.Narinder Kaur Cheema, who figured at

Serial No.1 in the seniority list has already retired; while respondents 4 to 13 had been shown as juniors to the petitioner in that list. On account of the retirement of Ms.Narinder Kaur Cheema, the petitioner is the Senior most Officer in the category of Sports Officer/Coaches/Senior Coaches. A Departmental Promotion Committee (for short to be referred as "DPC") meeting was held on 17.4.2004 to consider the filling up of nine vacancies of a higher designation. As the agenda item aforesaid had been prepared on the basis of tentative seniority list, a number of affected employees including the petitioner filed Civil Writ Petition No.2647 of 2004. In the pleadings, the Sports Department averred that all eligible "petitioners" would be considered for promotion by the DPC which will be held after the issuance of final seniority list. The meeting of the DPC was ultimately held on 9.5.2005 in a clandestine manner. It was in that DPC meeting that the petitioner's claim for promotion was ignored on the basis of certain ACRs of his which had been down-graded by the Accepting Officers without any notice to him. The DPC took into consideration the down graded ACRs.

The grievance of the petitioner is that his ACRs could not have been validly down graded by the Accepting Officer without hearing him and that his ACR for the year 2002-2003 had been invalidly written by respondent No.3 who, though junior to him, was functioning as Officiating District Sports Officer at the relevant point of time.

The petitioner filed Civil Writ Petition No.11767 of 2006 for a direction to the State to place on record the proceedings of DPC dated 9.5.2005 and also to quash the same and promote him. That petition came up for hearing on 1.8.2006. Another Writ Petition No.7395 of 2006 titled Ravinder Rishi Vs. State of Punjab was fixed for 3.8.2006. By means of

that civil writ petition, the petitioner (in that petition) had applied for the implementation of the DPC proceedings dated 9.5.2005. The respondents acted smart and passed the impugned promotion orders on 2.8.2006, thereby impelling the present petitioner to get his civil writ petition dismissed as withdrawn, with liberty to file a fresh one by challenging the orders dated 2.8.2006.

Mr.Rakesh Garg, learned counsel for the petitioner, argues that the denial of petitioner's claim for promotion on the basis of down graded ACRs is not in accord with the Rules governing the issue inasmuch as no opportunity of hearing had been afforded to him. He also pointed out that his ACR of 2002-2003 had been recorded by respondent No.3 – Ravinder Kumar, who was junior to him.

We called upon the learned counsel to indicate when exactly his ACR had been down graded. We also called upon him to indicate the period for which his ACR had been down graded. Our query drew a blank, though the learned counsel averred that the information aforesaid had been denied to him even when he resorted to the provisions of the Right to Information Act (for short to be referred as “RTI”).

As would be evident from a perusal of the relevant instructions governing the issue of promotion, the promotions under reference were to be made on the basis of merit-cum-seniority. A judgment about the inter se merit of the departmental candidates is a prerogative of the competent authority. In the absence of proven malafides or a wrong apparent on the face of it, this Court would not like to sit in judgment over the decision of the DPC which is the sole arbiter in the matter of judgment of comparative merit of the employees in the consideration zone of promotion. The

petitioner has not placed on record any material to prove that his ACRs had been recorded by his junior or any ACR had been down graded by the Accepting Authorities.

Yet another plea raised by the learned counsel for the petitioner is that respondent No.3 could not have been promoted to the higher post as departmental proceedings under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposition of penalty under Clause 5 to 9 of Rule 5 are still pending against him. This averment vis-a-vis respondent No.3 was made in particular. The general challenge is otherwise to the promotion of respondents No.3 to 10.

The plea aforesaid is falsified by a perusal of Annexure P8 which has been produced by none else or other than the petitioner himself. That annexure announces the liability of respondent No. 3 to pay a sum of Rs.34,320/- which had been found recoverable from him. It cannot, thus, be said that there was pendency of any other departmental enquiry against the respondent aforesaid. The guidelines in the matter of promotion were issued by the Government of Punjab vide letters dated 27.2.1998 (Copy Annexure P/9), dated 29.12.2000 (Copy Annexure P/10) and dated 6.9.2001 (Copy Annexure P/11). It is not the plea of the petitioner that respondent No.3 was not covered by the instructions aforementioned. Our attention has not been drawn to any material in support of the vague averment that the private respondents had been wrongly promoted or that they were, in any manner, lesser in merit vis-a-vis the petitioner.

As already indicated, the inter se merit of the candidates in the consideration zone is to be judged by the competent Authority (DPC). As respondents No.3 to 10 were found eligible for promotion, the orders in that

behalf cannot be faulted on any valid score.

In the light of foregoing discussion, this Civil Writ Petition is held to be devoid of merit and is ordered to be dismissed in limine.

(S. D. ANAND)
JUDGE

(J. S. KHEHAR)
JUDGE

August 29, 2006
SRM